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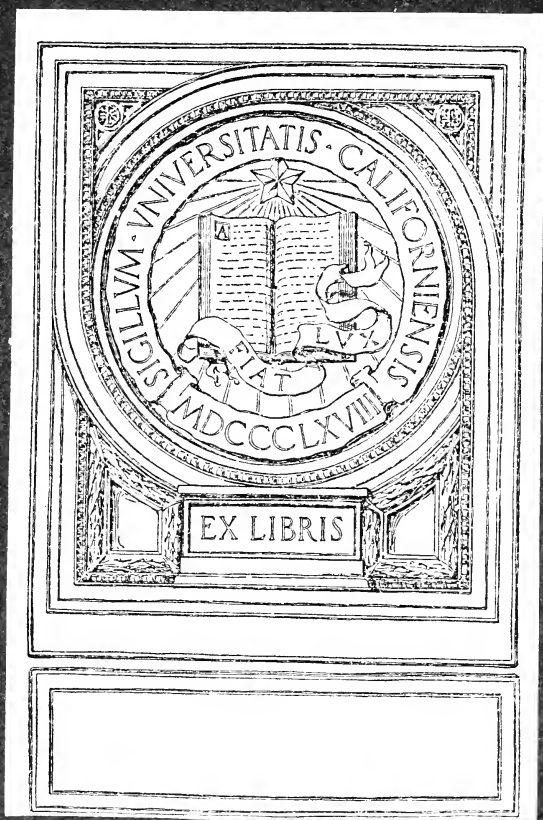
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Are Our Municipalities to Become Business Corporations?

By HON. HARRY A. LOCKWOOD

Judge of the 38th Judicial Circuit of Michigan

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Are Our Municipalities to Become Business Corporations?*

BY HON HARRY A LOCKWOOD

Judge of the 38th Judicial Circuit of Michigan

No one can give even a cursory glance at the history of municipal government in the United States for the past thirty-five years without noticing two conditions:

First: The municipalities have been very inefficient in the performance of governmental duties.

Second: They have steadily exercised more and more the business powers originally possessed by individuals or private corporations. They are rapidly becoming great business corporations.

The inefficiency and corruption of municipal governments have been so thoroughly exposed and discussed before the people, for the past few years, that nothing need be said in way of proof of the condition. In fact it may be true that we have become so conversant with this condition that it fails to excite surprise or to demand attention and has come to be regarded as normal or at least unavoidable.

HOW DOES IT AFFECT THE PEOPLE?

But what of this second tendency? How is it affecting our people? To what end is it leading? Is the first condition a natural and necessary result of the second?

Municipalities have only such powers as are expressly or impliedly granted by the state through its legislature:

"The creation of municipal corporations, and the conferring upon them of certain powers and subjecting them to corresponding duties, does not deprive the legislature of the state of that general control over their citizens which was before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether in the legislative discretion. The rights and franchises of such a corporation, being granted for the purpose of the government, can never become such vested rights as against the state that they cannot be taken away; nor does the charter constitute a contract in the sense of the constitutional provision which prohibits the obligation of contracts being violated."†

INCREASED BUSINESS ACTIVITIES

Notwithstanding this is the law, these corporations have steadily and rapidly increased their activities in the direction of conducting many and

* An address delivered before the State Association of Circuit Judges at Lansing, Mich., December 28, 1907.

† Cooley's "Constitutional Limitations," page 211.

diverse businesses, and we hear loud demands for freer local self-government to engage in all kinds of business which may at any time seem desirable to a majority of their inhabitants.

Without seemingly being aware of it, we are drifting towards municipal ownership, control and operation of many lines of production and the next step is State Socialism. This tendency is the antithesis of individualism which is and has been the very foundation of Anglo-Saxon progress.

Individual initiative, responsibility and accomplishment have been the distinguishing mark of the American and of his English ancestors.

The liberty of the individual is just as certainly invaded by the entry of government into competition with him in business as it is by any other oppressive and unnecessary interference with him by the government.

THE ANGLO-SAXON IDEAL

The distinction between the Anglo-Saxon ideal and the Latin ideal is very apparent to one who goes from this country to Europe. In France one is constantly shown great buildings, great undertakings carried to successful completion, great churches, great opera houses, all the result of the government's activity. Everything done beyond the simplest business of life is tinged by governmental assistance. The whole tendency is communistic. On the other hand, when one crosses the narrow channel that separates England from the continent he is impressed with the fact that the individual counts for much more.

It is individualism, personal effort, the liberty to do, to accomplish and to reap reward—the prize that is held out before the individual to be attained by his own effort—that has made England's people great.

THE AMERICAN IDEAL

And coming from England to America one finds this principle still more freely in operation; for here all artificial class distinctions are wiped out and each man stands for himself with equal opportunity and with unrestrained liberty to put forth his own effort in his own way and to reap the reward thereof, so long as he does not violate the law.

This distinction was very clearly perceived by that careful observer and masterful mind—Carl Schurz. The same impression was made upon his mind on coming to America that is made upon the minds of Americans who go to Europe. Very soon after coming to this land he wrote in a letter to a friend:

"What there is here of great institutions of learning, of churches, of great commercial institutions, lines of communication, etc., almost always owes its existence, not to official authority, but to the spontaneous coöperation of private citizens. Here you witness the productiveness of freedom. You see a magnificent church—a voluntary association of private persons has founded it; an orphan asylum built of marble—a wealthy citizen has erected it; a university—some rich men have left a

large bequest for educational purposes, which serves as a capital stock, and the university then lives, so to speak, almost on subscriptions; and so on without end. We learn here how superfluous is the action of governments concerning a multitude of things in which in Europe it is deemed absolutely indispensable, and how the freedom to do something awakens the desire to do it."

ANTAGONISTIC TO PROGRESS

So it seems to me that in a broad way this tendency is antagonistic to the very fundamental cause of our progress as a race and as a nation.

There can be no competition between a business conducted by an individual or a private corporation and a business supported by taxation upon its competitors. In the very nature of the case the municipality will soon have a monopoly of the business in which it engages in the territory over which the operations of this business extend, and the right of the individual to engage in that business is lost in that territory, in so far as the opportunity of the individual to select his occupation or business and to conduct it for the purpose of reward, for his own support or even for the benefit of the public, is denied him. It is socialism pure and simple. One of the definitions of socialism given by a prominent expounder is that:

"Socialism consists in the extension of national and the extinction of private ownership of the land, the streets, the houses, the shops, the ships, the railways, the mines, and all other materials for the production and the distribution of wealth. Socialism would abolish competition and private enterprise and would substitute coöperation and public control."

A WASTEFUL METHOD

The system of municipal ownership and municipal conduct of business not only interferes with the liberty of the individual, but it is a wasteful method of accomplishing the purposes.

As at present organized our municipalities are wholly unfitted for wise and prudent conduct of such undertakings. It seems strange that, in the face of the admitted inefficiency of our municipal organizations to exercise successfully the very limited governmental powers entrusted to them, because of lack of honesty or lack of sufficient patriotism or ability, some of our people desire to thrust upon them the exercise of much more complex and difficult duties.

Can it be expected that this inefficient organization, which has failed in the simpler field, will succeed in the more difficult? When to be a municipal legislator has become a reproach, can we expect to enlist and receive the undivided and patriotic effort of competent men, so that the conduct of business generally by a city can be wisely and economically managed?

Our limited experience in municipal ownership and operation, it seems to me, has demonstrated beyond a question the wastefulness of this method of production. It is true that, in many of our cities and villages,

the official who depends on the salary received in connection with the operation of the municipal property has figured out great saving and profit to the people, but if a fair investigation is made it will disclose that the cost to taxpayers in nearly every instance is greater than would be charged for the service by private individuals or private corporations.

FAIR FIGURES SHOW SAD RESULTS

If the cities that have embarked upon municipal ownership and operation will make a statement of the total amount of money taken from the taxpayers and applied to the business and add to this the debts owing by the city on account of the business and then make a fair inventory and appraisal of the property owned by the city in connection with the business, and deduct this from the sum of the former two the actual cost will be found to exceed what it would have cost to buy the product from private individuals or private corporations.

In the last thirty years, during which time municipal ownership has grown to its present proportion, the indebtedness of our municipalities has greatly increased. Our observation teaches all of us that the municipality, as an employer, gets less for its money than does any other employer.

Because some of our citizens may make a profit in furnishing to our villages and cities and their inhabitants certain things or certain services it does not follow that the municipal government should furnish these things or perform these services. If so, where is the limit of municipal business?

PRIVATE ENTERPRISE NOT AN OFFENSE

The conduct of a profitable business by an individual or a private corporation ought not to be considered an offense nor a misfortune to the community. There is no economic reason that can be given in favor of a wasteful method of production, and such is clearly the conduct of business by our municipalities.

When our municipalities in addition to supplying gas, electricity, water, etc., for purely municipal purposes such as street light, fire protection, flushing sewers, and sprinkling streets, sells to private consumers it is engaged in a private business. The purchasers desire to buy as cheaply as possible. The non-taxpaying consumers, if in the majority, can place practically the whole cost of what they use upon the taxpayers. What the city fails to receive from the private consumers of the cost of production must be made good by taxation.

THE INCENTIVE OF PROFIT DISAPPEARS

The incentive of profit does not enter into the dealings of a municipal officer with the individual citizen (except it may be a profit from graft). No business principles need be observed. The next appropriation must cover the deficit. How natural it is that this municipal officer is liberal

with his constituent who is a consumer and shifts the burden upon the public in the form of taxes. My own observation of the actual operation of such municipal plants satisfies me that correct business methods are lacking.

The opportunity for graft, the curse of our municipal governments, is immeasurably increased when the city engages in business, becomes a trader and an employer of many men. When the city becomes on a large scale the employer of its sovereign voters another serious complication is added to the troublesome labor question.

The lord provost of Glasgow, the official head of the second city of the empire, which has over 13,000 municipal servants, in 1902 uttered a grave note of warning on this subject. He declared that

"One danger to his mind was that in the vast army of municipal employes they had an organized host, whose operations at the polls might be destructive of the very best government of the city. What the remedy might be, it was not for him to suggest at present but in view of that growing danger, he had sometimes thought whether the time might not shortly arrive when disfranchisement might be a condition of municipal employment, or if not disfranchisement, that such bodies might be represented by only a sectional representation, carefully and well differentiated."

CANNOT BE HALF BOND AND HALF FREE

I do not believe the great business life of this country can long endure half socialistic and half free competition. When it gets to that point it must either go back to the individualistic idea with competition as the great controlling law or go on to State Socialism. I think we should look at this question squarely and determine now which we will choose.

To my mind there ought to be no doubt about the decision. We should stand for that which has made us industrially great—the liberty of the individual, the right of private ownership of property, and the right to engage in any legitimate business in a lawful manner unhampered by municipal or state monopoly.

Instead of enlarging the so-called business powers of our villages and cities it is wiser to restrict them.

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